IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

JUGAL KISHORE DAYMA VS. NATIONAL INSURANCE COMPANY LIMITED

(S.B.C.Writ Petition No.2613/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.P.P.Choudhary, Advocate for the petitioner.
Mr. M.S.Singhvi, Advocate for the respondent.

This writ petition has been filed by the petitioner with the prayer that the respondents be directed to provide appointment of the petitioner on the post of Development Officer(Marketing Trainee) against the backlog vacancies for Scheduled Caste category with all consequential benefits.

The case of the petitioner is that the respondents issued an advertisement dated 17th January, 1996 inviting applications from the candidates belonging to S.C./S.T. and O.B.C. only for appointment as Marketing Trainee against backlog vacancies in the cadre of Development Officer on probation in its offices under Jaipur region. The petitioner has also submitted an application and

appeared in the written test on 11.2.1996. He passed the qualifying test and was called for interview on 20.2.1996. In the interview also the petitioner performed excellently well. The respondents have prepared a merit list in which the name of the petitioner was placed at serial no. 8 whereas the number of backlog vacancies of S.C. category shown in the advertisement was five. According to petitioner subsequently it was found that there were in fact ten backlog vacancies in S.C. category and the respondents have appointed candidates upto serial no. 7 in the merit list . The fact was that there were in all ten backlog vacancies of S.C. and yet no appointment order was issued in favour of the petitioner. The petitioner aggrieved thereby submitted a representation to the Chairman, S.C./S.T. Commission, New Delhi on 25th May, 1998 followed by another representation dated 28th June, 1998. He also submitted a representation to the Chief Liaison Officer, National Insurance Company, Jaipur on 20th June, 1998. The petitioner received a copy of the communication dated 19th August, 1998 which was sent by the S.C./S.T. Commission to the the respondent company. The Assistant Director, National Commission for SC/ST, New Delhi sent letter to the Chairman, National Insurance Company on 21st August, 2000 requiring them to give full facts of the case together with parawise contents on the points raised by the

petitioner in his writ petition. According to the petitioner, inspite of availability of ten vacancies, the respondents have given appointment only upto seven candidates in the merits list and did not issue appointment order to the petitioner who was at serial no. 8 in the merit list. It was against the backdrop of these facts that the present writ petition has been filed.

The respondents have contested the writ petition and filed a detailed reply. In the reply a preliminary objection was raised regarding delay and latches. While advertisement for the appointment was issued on 17.1.1996, selection process pursuant to the said advertisement was completed long back and validity of the select panel itself expired on 31.3.1997, yet however the writ petition has been filed enormously delayed in the year 2003. No explanation whatsoever has been given for this delay in filing this writ petition. Although, the respondents have admitted that the name of the petitioner appeared at serial no. 8 but the fact is that the recruitment was made only upto five vacancies as originally notified in the advertisement and since the name of the petitioner did not figure within five candidates in the merit list, he was not entitled to get any appointment. The respondents have in their reply stated that "it was absolutely wrong to contend that the number of

backlog vacancies were revised to 10". They have further asserted that "it is absolutely wrong to contend that persons as serial no. 7 in the merit list of scheduled caste candidates were given appointment". Moreover, according to them the term of the select panel having expired on 31.3.1997, no relief to the petitioner could be granted. In regard to the representation made by the petitioner to the National Commission for SC/ST, the respondents have contended that on receiving query from the said Commission, the respondents duly replied way back in the year 1999. The petitioner even thereafter filed writ petition enormously delayed in the year 2003 without any explanation.

The petitioner has filed rejoinder to the reply with which he has placed on record the copy of the letter dated 8.7.1998 which was sent by the respondent company to the Commission, SC/ST. It would be evident from the letter that apart from the merit of five candidates, the respondent company had placed three candidates in the reserved list of S.C. category in which the name of the petitioner appeared at serial no.3. Similarly, one candidate was placed in the reserved list of O.B.C. category. It was clarified to the Commission that Rakesh Kumar Rajora of S.C. Category who was at serial no. 1 in the reserved list (at serial no.6 in the main list) was also called

upon being selected but when he did not appear, Ramesh Chand Pilwal who was at serial no. 2(no. 7 in the merit list) was called in his place. In the reply, it was clarified that after completion of the selection process when five candidates joined in October, 1997, in the backlog of S.C. only one post remained to be filled up whereas appointment against all the backlog vacancies of SC/OBC have been made.

It should be noted that the respondents have notified only five vacancies in the main advertisement in so far as their Jaipur regional office is concerned, which would be evident from the advertisement. It is not the case of the petitioner that a reserved list can be allowed to be operated only if a candidate from the main list either does not join or has left after joining. But this is not the assertion of the petitioner although communication dated 8.7.98 sent to the Commission by the respondent company indicated that one more vacancy remained available with them at the conclusion of the selection process but in the reply the respondents have asserted their denial that the person at serial no. 7 in the merit list was given appointment and further they also denied that the backlog vacancies were revised to ten. The facts nonetheless remains that no candidate lower in merit than the petitioner was appointed. Mere

selection by itself does not confer any right upon the selected candidates inasmuch as the rights of those who are placed in the waiting list is still of an inferior kind.

It is trite law that when the selected candidates are not appointed they have no right to claim appointment because mere selection by itself does not create any right in favour of the selected candidates. Right of those who did not appear in the merit list or the select list, but in the waiting list is still inferior to the formal category of candidates. Their Lordships in State of U.P.Vs Bibkhakar Dwivedi & Ors (2003) 12 SCC 62 while considering the somewhat similar question observed in para no.11 of the judgment as under: -

> "11. The general principle of law as has been established and followed repeatedly by this Court is that even those candidates whose names are included in the merit list do not have a vested right to be appointed (see Shankarsan Das vs. Union of India). The decision relied upon by the High Court and which has been cited before us, namely, Jai Narain Ram v. State of U.P. had been rendered in connection with the case of Scheduled Caste candidates. It was held in that case that scheduled Caste candidates who were in the waiting list could be directed to be appointed against the reserved category when vacancies were created in such reserved category by reason of the successful candidates not joining the post. The reasoning is based upon Article 14 read with Articles 16(1) and (4) of the Constitution."
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> Recently again in Secretary, A.P. Public Service

Commission Vs. B. Swapna & Ors (2005) 4SCC 154 their lordships of the Hon'ble Supreme Court while considering the cases in Prem Singh Vs. Haryana SEB (1996) 4 SCC 544 and State of J& K vs. Sanjeev Kumar (2005) 4 SCC 148 held that there are two settled principles of service law, firstly, there cannot be appointed beyond advertisement and secondly also selection can be altered after the selection process is started.

This question however should not detain me any longer because the Division Bench of this court in Laxman Prasad Sharma (supra) on consideration of the Rules of 1996 held in para no.11 as under: -

> "11. In the instance case, as far as Pratapgarh judgeship is concerned, a perusal of Annex.R/1 shows that 23 vacancies for which the subsequent advertisement was issued, had arisen because of the future event. Due to inter-district transfer on 22.5.2001, 3 vacancies had fallen vacant and 2 posts on 4.7.2001 due to promotion of 2 LDCs. By other inter district transfer orders dt. 15.12.01, 30.1.02 and 1.2.2002, 7 posts of LDCs had fallen vacant and one post fell vacant on 16.3.02, 3 posts fell vacant on account of deaths, 3 vacancies on account of voluntary retirement and one resignation. Thus, these vacancies cannot be said to be likely or anticipated vacancies. Sub Rule (III) of Rule 19 of the Rules of 1986 also does not advance the case of the appellants. This rule only provides that if a candidate from the select list is not appointed within a period of one year, his name shall be struck off from the bound register maintained under sub-rule (1) of Rule 19."

In view of the aforesaid discussions, I do not find any merit in this writ petition and the same is therefore dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.